



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1998

Ms. Marie E. Galindo
Assistant City Attorney
The City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR98-1808

Dear Ms. Galindo:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117279.

The City of Midland (the "city") received an open records request for the following information with regard to the use of a particular live animal trap owned by the city:

1. What is the name and address of the person who requested the City of Midland to furnish this trap?
2. Where was the trap located (physical street address) when it trapped our cat, Scooter?
3. Does the City of Midland have similar traps currently in use within one (1) block of . . . (my home address)?
4. If so, what is the name of the person and their street address who has requested subject trap?

You explain that the city has enacted an ordinance that prohibits a person from allowing an animal he or she owns to be "at large." In this instance, an individual captured the cat in a trap owned by the city and turned the cat over to the city's animal control center.¹

¹We assume for purposes of this ruling that the individual who trapped the cat was not acting as an agent of the city.

You state that the city does not possess any records that are responsive to items 3 and 4 listed above. You have, however, submitted to this office for review an "information card" kept by the animal control center that contains information responsive to items 1 and 2. You contend that the name and address of the individual who trapped the cat are excepted from required public disclosure by the informer's privilege as incorporated into section 552.101 of the Government Code.

The informer's privilege protects the identity of persons who report possible violations of the law to the officials charged with enforcing that law. Open Records Decision No. 515 (1988) at 5. Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can also apply to administrative officials with a duty to enforce particular laws. Attorney General Opinion MW-575 (1982) at 2. The informer's privilege does not, however, apply when identity of the informer is known to the person who would have cause to resent the communication. Open Records Decision No. 208 (1978) at 1.

In this case, we conclude that the identity of the individual who trapped the cat is excepted from disclosure by the informer's privilege. By surrendering the cat to the appropriate authorities, this individual "reported" a violation of a city ordinance. The city may, therefore, withhold the name and address of the individual who trapped the cat under section 552.101.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/mjc

²We note that, unlike other aspects of section 552.101 of the Government Code, the informer's privilege is a discretionary exception that a governmental body may choose to assert or to waive. See Gov't Code § 552.007; Open Records Decision No. 549 (1990). Therefore, the city may choose to release the "informer's" name and address.

Ref.: ID# 117279

Enclosure: Submitted document

cc: Mr. Dennis R. Johnson
President
Henry Petroleum Corporation
3525 Andrews Highway
Midland, Texas 79703
(w/o enclosure)